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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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第十一章

**EXAMINER**

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<b>ART UNIT</b>	<b>PAPER NUMBER</b>
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SOMETHING IN THE AIR

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**PAPER NUMBER**

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**DATE MAILED:**

#### REFERENCES

**Please find below and/or attached an Office communication concerning this application or proceeding.**

## **Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/368,670</b>	Applicant(s) <b>Llinas-Brunet</b>
	Examiner <b>David Lukton</b>	Group Art Unit <b>1653</b>

Responsive to communication(s) filed on Feb 3, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claim

Claim(s) 1-99 is/are pending in the application

Of the above, claim(s) 67-72, 75, 78, 81, 83, 84, 89-95, and 97-99 is/are withdrawn from consideration

Claim(s) 73, 74, 76, 77, 79, 80, 82, and 85-88 is/are allowed.

Claim(s) 1, 6-12, 16, 20, 21, and 40 is/are rejected.

Claim(s) 2-5, 13-15, 17-19, 22-39, 41-66, and 96 is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e)

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Pursuant to preliminary amendment, claims 87 and 88 have been amended to change their claim dependence.

Applicants' election of Group 2 with traverse is acknowledged, as is the elected species (compound # 633, table 6, page 141). Applicants have traversed by arguing that Groups 2, 6, 10 and 14 should be rejoined with Group 2. The examiner agrees, but only in the event that the claims of Group 2 are determined to be novel. As for the issue of rejoining one or more of the other non-elected groups, the fact is that Group 2 encompasses numerous peptides that have been previously disclosed. Accordingly, the restriction is justified. However, in the event that significant limitations are introduced into group 2 (e.g., that R<sub>1</sub> and R<sub>1a</sub> must form a ring, and that A cannot be just anything that is bonded to a nitrogen atom), it would be appropriate to consider the possibility of rejoining one or more of the non-elected groups.

Applicants have also requested the rejoining of claims 79, 80 and 85-88. These claims will be joined with the elected group. Claims 1-66, 73, 74, 76, 77, 79, 80, 82, 85-88, 96 are examined in this Office action; claims 67-72, 75, 78, 81, 83, 84, 89-94 and 97-99 are withdrawn from consideration.

\*

Claim 1 is rejected under 35 U.S.C. §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention.

In claim 1, part (b), substituent "B" is described as being C<sub>3-7</sub> cycloalkyl or C<sub>4-10</sub> alkylcycloalkyl, optionally substituted with carboxyl. This is then following by two possible structures as examples. However, this is improper form. Claim 1 should state just that B is C<sub>3-7</sub> cycloalkyl or C<sub>4-10</sub> alkylcycloalkyl, optionally substituted with carboxyl; a dependent claim can be added which provides the two (subgeneric) examples.

\*

The following is a quotation of the appropriate paragraphs of 35 U.S.C §102 that form the basis for the rejections under this section made in this action.

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2) and (4) of section 371(c) of this title before the invention thereof by the applicant for the patent.

Claims 1, 6-12, 16, 20, 40 are rejected under 35 U.S.C. §102(e) as being anticipated by Naumann (USP 5,962,638).

Naumann teaches (col 17) sequence ID No. 3, which is the following peptide:

Ala-Ala-Ala-Ala-Ala-Ala-OMe

This peptide is encompassed by instant claim 1 if the substituent variables correspond as follows:

a = b = 0;  
B = Hydrogen;  
R1 = R2 = R3 = R4 = alkyl;

A = N-substituted amino.

Thus, the claim is anticipated.

\*

Claims 1, 6-12, 16, 20, 21, 40 are rejected under 35 U.S.C. §102(e) as being anticipated by Eichner (USP 5,994,311).

Eichner teaches (col 5, line 35) the following peptide (single letter abbreviations):

L-A-E-L-L-D-G-E-G

This peptide is encompassed by instant claim 1 if the substituent variables correspond as follows:

a = b = 0;  
B = Hydrogen;  
R1 = R3 = R4 = alkyl;  
R<sup>2</sup> = alkyl substituted with carboxyl  
A = N-substituted amino.

Thus, the claims are anticipated.

\*

Serial No. 368,670  
Art Unit 1653

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It is suggested that applicants amend claims 93-95 as appropriate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton. Phone: (703) 308-3213.

An inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.



DAVID LUKTON  
PATENT EXAMINER  
GROUP 1800